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EXTRAORDINARY

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LABOUR

NOTIFICATION

New Delhi, the 27th August, 1976

S.O. 573(E).—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the National Tribunal at Calcutta in the industrial dispute between the bargemen represented by

(1) Calcutta Port Shramik Union, Calcutta-23.

(2) Calcutta Port and Dock Workers Union, Calcutta-23.

(3) Calcutta Dock Workers Union, Calcutta-23.

(4) West Bengal Dock Mazdoor Union, Calcutta-23.

(5) Calcutta Boatmen's Union, Calcutta-23.

and the owners of barges, lighters and boats represented by

(1) The Bengal River Transport Association, Calcutta-1.

(2) The Calcutta River Transport Association, Calcutta-1.

M/s. Fraser & Co., Calcutta-1.

which was received by the Central Government on the 30th July, 1976.

NATIONAL TRIBUNAL AT CALCUTTA

PRESENT:—Shri Justice E. K. Moidu—Presiding Officer.

Reference No. NT-1 OF 1974

PARTIES :—Bargemen—represented by—

1. Calcutta Port Shramik Union, Calcutta-23.
2. Calcutta Port and Dock Workers Union, Calcutta-23.
3. Calcutta Dock Workers Union, Calcutta-23.
4. West Bengal Dock Mazdoor Union, Calcutta-23.
5. Calcutta Boatmen's Union, Calcutta-23.

and

The Owners of Barges, Lighters and Boats—represented by—

1. The Bengal River Transport Association, Calcutta-1.
2. The Calcutta River Transport Association, Calcutta-1.
3. M/s. Fraser & Co., Calcutta-1.
4. Port Shipping Company Limited, Calcutta-1 (an added Party).

APPEARANCE : On behalf of Workmen

Shri D. L. Sen Gupta, Senior Advocate, with Shri Shyam Chakraborty, Advocate (For Calcutta Port Sramik Union).

Shri Safiruddin Ahmed, Joint Secretary—(For Calcutta Port & Dock Workers Union).

On behalf of Employers

1. Shri Monotosh Mukerjee, Bar-at-Law, with Shri B. K. Mukherjee, Advocate and Shri Dilip Bhattacharyya, (for Calcutta River Transport Association).
2. Shri N. K. Mukherjee, Advocate and
   Shri C. L. Ganguli, Advocate, with
   Shri D. N. Basu, Advocate,
   (for Bengal River Transport Association).
3. Shri P. P. Ginwalla, Bar-at-Law, with
   Shri A. Chaudhuri, Bar-at-Law, and
   Shri R. Chaudhury, Advocate of M/s. Khaitan & Co., Limited, Solicitors.
   (for Port Shipping Company Limited).
4. Shri S. M. Banerjee, Labour Adviser and Industrial Relations Officer.
   (for Calcutta Port Trust).

(There was no appearance for other Parties).

INDUSTRY :Port & Dock.

AWARD

The Order of Reference dated 22nd August, 1970 by the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), Government of India, reads as follows:

"ORDER

S.O. .—Whereas the Central Government is of opinion that an industrial dispute in respect of the matters specified in the Schedule hereto annexed exists between the bargemen—represented by :—

(1) Calcutta Port Sramik Union, Calcutta-23.

(2) Calcutta Port and Dock Workers Union, Calcutta-23.

(3) Calcutta Dock Workers Union, Calcutta-23.

(4) West Bengal Dock Mazdoor Union, Calcutta-23.

(5) Calcutta Boatmen's Union, Calcutta-23.

and the owners of barges, lighters and boats—represented by:—

(1) The Bengal River Transport Association, Calcutta-1.

(2) The Calcutta River Transport Association, Calcutta-1.

(3) M/s. Fraser & Co., Calcutta-1.

plying to, fro and within the Port of Calcutta and that the dispute involves a question of national importance;

And, whereas the Central Government is of opinion that the dispute should be adjudicated by a National Tribunal;

Now, therefore, in exercise of the powers conferred by Section 7B and sub-section (1A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes a National Tribunal at Calcutta of which Shri B. N. Banerjee shall be the Presiding Officer and refers the said dispute to the said National Tribunal for adjudication."

SCHEDULE

"Whether recommendations of the Central Wage Board for Port and Dock Workers, as accepted by the Central Government in their Resolution No. WB-21(7)/69, dated the 28th March, 1970 are applicable to the bargemen in the matter of wages and allowances? If not, to what other relief with regard to wages and allowances are they entitled?"

2 The trial of the reference was stayed because one of the employers filled a writ application under Article 226 of the Constitution before the Calcutta High Court questioning the validity of the reference. That application was dismissed on 24th January, 1972. As against the dismissal of the application the employer filled a writ appeal to the High Court, but the appeal was unconditionally withdrawn on 11th July, 1974.

3. In the meanwhile Sri B. N. Banerjee to whom the case was referred had retired from service with effect from 24-6-1971. The Government of India, therefore, by its Order dated 12th July, 1972 under Section 7B read with sub-section (1) of Section 33B of the Industrial Disputes Act, 1947 constituted a National Tribunal with Sri S. N. Bagchi as Presiding Officer with the direction to dispose of the reference in accordance with law. On account of the pendency of the proceeding before the High Court at Calcutta he was not able to take up the reference for trial. Sri Bagchi retired from service on 31-1-1974. Thereafter the Ministry of Labour, Government of India constituted by its Order dated 18th July, 1974 a National Tribunal with myself as Presiding Officer at Calcutta and transferred the proceeding to that Tribunal for disposal in accordance with law. It was accordingly that the reference came up before me for trial.

4. The parties filed written statement in the case. The Calcutta Port & Dock Workers Union filed their written statement on 21-9-70 and the Calcutta Boatmen's Union on 28-9-70. The Calcutta Port Shramik Union also filed their written statement on 21-9-1970. The Calcutta Port Shramik Union filed an additional written statement on 27-2-1975 and a rejoinder on 6-6-1975 in answer to the written statements of Calcutta River Transport Association, Bengal River Transport Association and the Port Shipping Company Limited who filed their written statements on 19-3-1975, 3-5-1975 and 24-6-1975 respectively. The parties have taken different contentions in their respective written statements. In course of this Award the Calcutta River Transport Association will be referred to as CRTA, Bengal River Transport Association as BRTA and the Port Shipping Company Limited as the Shipping Company only unless otherwise specifically stated. On behalf of the employers as many as 8 (eight) witnesses were examined and they have marked documents as Exts. M-1 to M-53. The Calcutta Port Shramik Union which espoused the cause of the workmen examined as many as 10 (ten) witnesses and marked Exts. W-1 to W-40 on their side.

5. Fraser & Company, Calcutta, among the employers and Calcutta Port and Dock Workers Union, Calcutta Dock Workers Union, West Bengal Dock Mazdoor Union and Calcutta Boatmen's Union among the Unions out of the original parties to the Reference had dropped out of the contest. The Port Shipping Company Limited was added on as a new party pending the Reference on the employer's side.

6. The disputes for payment of enhanced wages and allowance by the owner of barges, lighters and boats to their bargemen have been a long drawn out problem. The claim had been pending even much prior to September, 1969. On 9-9-1969 the Union served a charter of demands on the employers and that is marked as Ext. W-10. It demanded *inter alia* the revision of scales of pay, revision of the rate of dearness allowance and other allowances, rate of bonus payable to workmen, hours of work, supply of uniform, permanancy of service and retirement benefits. The management did not want to settle the dispute through negotiations. Ext. W-10(a) dated 18th September, 1969 with a covering note containing demands regarding wages and allowances was again sent to the management at the instance of the Union, Exts. W-10 and W-10(a) represented the original demands of the union on behalf of the bargemen concerned in the case. The management, however, had not taken any step to satisfy the claims of the union on behalf of the bargemen. So, the bargemen declared a strike during the course of which there was an amicable settlement of the claim on 7th October, 1969. Ext. M-5 was the settlement entered into by the employers and the union concerned in the case. The Shipping Company who was then a member of CRTA was the first signatory to that settlement. On behalf of the barge owners their representative, CRTA had also affixed his signature to the original of Ext. M-5. It was agreed under the settlement that owners of boat and launch crew employed by the members of the CRTA shall pay Rs. 30 per month as an enhanced salary to the bargemen beginning from the month of September, 1969. There was also other benefits conferred on the workmen under the settlement. It is relevant to point out that under paragraph 4 of Ext. M-5 there was an agreement that the determination of the final wage structure for workmen of CRTA members and other demands of the union would be discussed only on the industry-wise basis (*i.e.* both CRTA members and others) with a view to bring about uniformity in the wage structure and other conditions of service of workmen under the employment of all lighterage. In view of the settlement the strike was withdrawn; but sometime later the bargemen were on strike since 22nd May, 1970 demanding amongst other things the implementation of the recommendation of the Central Wage Board for the Port & Dock Workers as accepted by the Government of India. The Conciliation Officer intervened to settle the dispute and as a result of which there was discussion under the auspices of the Union Labour Minister on 25th July, 1970 at New Delhi with the result that an interim settlement was arrived at as evidenced by Ext. M-5(a), the terms of which were an interim relief of Rs. 20 per month per worker to be paid on the resumption of work by the workmen. The significant part of the settlement reads, "the question of reference of the dispute relating to the implementation of the recommendation of the Central Wage Board for Port & Dock Workers to an appropriate tribunal will be left to be decided by the Central Government". The workmen resumed duty thereafter.

7. It is relevant to point out that it was on the basis of Ext.M-5(a) that the Ministry of Labour, Government of India referred the dispute to the National Tribunal under reference dated 22nd August, 1970. But, even after the reference the workmen stopped work since 13-9-1971. There was mediation attempt on the part of the Conciliation Officer and the parties thereafter came to an another settlement dated 19th October, 1971 which is marked as Ext. M-5(b). The CRTA and its members were parties to the settlement. The Shipping Company was one of the members of CRTA then. The workmen were given enhanced wages with effect from 1-8-1971. Further agreement was that the union will pursue its demands on industrywise basis amongst the CRTA members and other owners in order to bring about uniformity in wages, allowances and other conditions of service of workmen under the employment of all lighterage companies. The agitation did not stop with the settlement. The Union served a notice of strike on 15-6-72 on CRTA, BRTA and other companies for the implementation of the recommendation of the Central Wage Board for Port & Dock Workers in respect of bargemen employed by barge owners who were members of CRTA, BRTA and other companies. The Ministry of Labour, Government of West Bengal intervened in the matter and a settlement was arrived at on 7-9-73. That settlement is marked as Ext. M-5(c). It was in that meeting that the management agreed to give a go-by to the writ appeal which was filed in the High Court at Calcutta. The workmen were, however, given an enhanced salary as well as other benefits under the settlement. Ext. M-5(c) further provided that the settlement will be binding upon the parties during the pendency of the proceeding before the Tribunal or for two years whichever is earlier and it is further agreed that during that period no

precipitate action which will be hampering normal work will be taken by the parties. Without prejudice to the rights and contentions of parties on the pending dispute before the National Tribunal they entered into that settlement. The last paragraph of the settlement provides further that the Union agree to enforce the terms of the settlement on industry-wise basis.

8. On 20th June, 1973 the union submitted a charter of demand to CRTA raising some demands relating to allowance, Provident fund, etc. and ultimately they served a strike notice on CRTA, on 24th July, 1973 alleging that they would stop work after 21 days. Any way, the strike was deferred for 10 days and the matter was taken up for conciliation. The Labour Minister intervened in the negotiation and tripartite meetings were held and after protracted discussion terms of settlement were arrived at between the parties on 6-9-73. Ext. M-5 (d) is the copy of that settlement. Dandees, Majhis, Launch Crews, Munshis and Bhat Manjhis received an increase of Rs. 25/- per mensem in dearness allowance with effect from 1-8-1973. They also received other benefits. One of the conditions was that without prejudice to the rights and contentions of the parties in the case pending before the National Tribunal the settlement would be binding upon the parties for two years from the date of the settlement or till the award of the Tribunal whichever is earlier. The dispute did not stop with the settlement. Again on 2-5-1974 a charter of demand was submitted by the union concerning the bargemen to CRTA, BRTA and Shipping Company which by the time was reported to have resigned from the membership of CRTA. The Union indicated that if their demands were not fulfilled within a period of 21 days the bargemen concerned would go on indefinite strike on the expiry of 21 days. There was a conciliation proceeding with the result Ext. M-5(e) settlement dated 18-6-74 was brought into existence to which CRTA, BRTA and Shipping Company were parties. As usual the workmen were given an increase of Rs. 30/- in the dearness allowance. The parties agreed in this settlement that they would cooperate with the proceedings of the Tribunal so that the same could be expeditiously disposed of and an award given.

9. The union had also informed the CRTA and its members concerning the claim for enhanced wages by the bargemen by their letter dated 28th March, 1970. Ext. M-8 is that letter, copy of which was seen to have been forwarded to BRTA. This was in addition to Ext. W-10 and W-10(a) demands made by the union earlier. The settlement as well as the demands made by the union from time to time would indicate that there had been effective demands by the union for the enhancement of wages and allowances to be paid to the bargemen both on the basis of the recommendation of the Central Wage Board as well as on the basis of their alleged legitimate claim for enhancement separately from the recomendations of the Central Wage Board.

10. It is necessary to dispose of some of the preliminary objections which have been raised mostly at the instance of Sri P. P. Ginwalla, the learned Counsel of the Shipping Company with regard to the maintainability of the Reference. First of all the question as to the presence of the Shipping Company in this proceeding has to be examined. The case of Sri Ginwalla is that he had not been properly summoned to appear before the Tribunal. It would appear from the proceeding of the Tribunal that the Shipping Company was sought to be impleaded as a party to the proceeding at the instance of the Union. Accordingly, an order was passed on 13th February, 1975 to issue notice to the Port Shipping Company as that company was no longer a member of the CRTA. It is admitted that the Shipping Company severed its connection with CRTA only sometime in 1974 or later. An order dated 17th February, 1975 was served on the Shipping Company which was received by them on 20th February, 1975, in which it was alleged that a reference had been made to this tribunal on the question involved regarding the bargemen and that they had been implemented, therefore, as a party to the Reference. They were, however, directed to file written statement within two weeks from the date of receipt of the order. In response to that direction the Shipping Company appeared before the Tribunal and filed as many as six applications dated 7th March, 1975, 24th March, 1975, 10th April, 1975, 26th April, 1975, 16th May, 1975 and 12th June, 1975 asking the Tribunal in each of those application for time to be extended to file written statement. The Shipping Company put forward one execuse or the other for not filing written statement and finally on 24th June, 1975 a written statement was filed raising various contentions. In none of the earlier applications the Shipping Company made any indication that they were not necessary or proper party to the proceeding. They had accepted the summons and appeared before the Tribunal. The form of notice or the manner in which the notice was worded does not appear to be a material circumstance to hold that their impleading as a party to the proceeding was invalid on any ground. After they filed the written statement the proceeding came up for hearing on 25th June, 1975, 22nd July, 1975 and 11th August, 1975 during the course of which no objection was raised that they had been wrongly impleaded in the proceeding. The impleadment as party was therefore made in accordance with law on proper grounds. They had been summoned to appear under Sec. 18(3)(b) of the Industrial

Disputes Act, 1947. The question is whether the Shipping Company is necessary or a proper party to the reference. It is an admitted case that the Shipping Company was a member of the CRTA and a representative of CRTA signed several of the settlements for and on behalf of the Shipping Company. The fact that the Shipping Company was represented by the CRTA could not be disputed from the facts and other matters which are brought out in evidence in the case. Once it was a party to the settlement as member of the CRTA, the question that they severed connection with CRTA does not in any manner affect the binding nature of the settlements arrived at while they continued to be a member of CRTA. They could not dispute the representative capacity of CRTA (*See* Raja Laxmi Mills *vs.* Their Workmen, 1957 II LLJ, 426).

11. It is necessary in this connection to consider Sri Ginwalla's another contention that there is no industrial dispute between the Shipping Company and the workmen in this case as no separate demand had been made by the union or the workmen to the Shipping Company regarding their demands and as such no industrial dispute has come into existence to be considered by this tribunal. This argument is based on the principle that a demand by the workmen must be raised first with the management and rejected by them before an industrial dispute can be said to arise and exist and that making of such a demand to the Conciliation officer and its communication by him to the management who rejected the demand is not sufficient to constitute an industrial dispute. It has to be said that there had been a specific demand by the workmen to bring about in existence of an industrial dispute depends upon the facts and circumstances of each case. In the case of management of Radio Foundation Engineering Limited *vs.* State of Bihar, 1970 Labour Industrial Cases, 1119, a Division Bench of Patna High Court held that a specific demand was not necessary on the facts of that case. Any way, in the facts and circumstances of the present case it is to be held that a specific demand was not necessary by the workmen to the Shipping Company as the demand had already been made by the union to the CRTA of which the Shipping Company was a member. Exts. W-10 and W-10(a) and Ext. M-8 represented the original demand made by the union to the CRTA when it was admitted that Shipping Company was a member of the CRTA. If the argument of Sri Ginwalla has to be accepted, then clause (1) of Section 36 of the Industrial Disputes Act, 1947 will have no application to a case like this. That subsection provides that any employer who is a party to the industrial dispute shall be entitled to be represented in any such proceeding by an officer of an Association of employers. Admittedly Shipping Company was a member of the Association of employers. CRTA was entitled to represent the employers and it is not necessary for such representation that the employers should also be so nomini parties to the reference. This aspect of the case was discussed at paragraph 14 of the Ruling reported in 1953 I LLJ, 563 (The South India Cashewnut Manufacturers' Association *vs.* Chief Secretary to the Government, Travancore-Cochin State). In this regard the contention of Sri N. K. Mukherjee, learned Counsel on behalf of BRTA can also be answered. His case was that BRTA was not the employer of the bargemen but he had to admit that the employers are members of BRTA. It is not necessary that all the owners of the barges should be made parties to the reference if they are members of any Association. It is relevant in this connection also to point out that BRTA file the written statement in this case for and on behalf of the member of the Association. The head line of the written statement of BRTA reads "Written statement on behalf of Bengal River Transport Association—No. 1 Employer above mentioned". In the written statement of CRTA filed on 19th March, 1975 the head line reads "Written statement on behalf of owners of Barges and Lighters represented by the Calcutta River Transport Association, Calcutta-1, hereinafter to be mentioned as "The Association". So, CRTA and BRTA themselves have admitted that they represent the owners of barges and lighters. It is not necessary that all the barge owners are to be made parties to the reference when all the owners are represented either by BRTA or CRTA. Under these circumstances, it has to be held that neither impleading of the Shipping Company nor the non-impleading of other barge owners is a defect which affects the validity of the Reference against any of the parties who are before the Tribunal.

12. Sri Ginwalla next questions the validity of the appointment of the Presiding Officers under Section 7B of the Industrial Disputes Act, 1947. The power to constitute National Tribunal is only with the Central Government under Section 7B. A National Tribunal can be constituted only for the adjudication of the industrial dispute involving question of national importance of the industrial dispute in which industrial establishments situated in more than one States are likely to be interested in or are likely to be affected by it. The reference to a National Industrial Tribunal can be made only by the Central Government whether it is or is not the appropriate Government. Sub-section (6) of Section 10 provides that when a reference of industrial dispute under sub-section (1A) of Section 10 is made to a National Tribunal, it is the National Tribunal alone will have jurisdiction to adjudicate upon the dispute and any industrial tribunal or labour court before whom the same dispute may be pending adjudication shall cease to have jurisdiction to proceed further with the adjudication of the dispute. Sub-section (7) of Section 10 further provides that when a reference of an industrial dispute is made to a

National Tribunal by the Central Government, whether it is the appropriate Government or not, then notwithstanding anything contained in the Act any reference under Sections 15, 17, 19, 33A, 33B and 36A to the appropriate Government in relation to such dispute shall be construed as a reference to the Central Government. The above statement is an indication that the Reference made by the Central Government to the National Tribunal is unquestionable if it is otherwise valid. This answer will be sufficient to negative the contention raised by BRTA in its written statement that the appropriate Government to refer the dispute in this regard is the State Government.

13. The validity of the appointment under Section 7B is questioned on the ground that the Central Government should have made the appointment under Section 8 of the Industrial Disputes Act when a permanent vacancy arose on two occasions, one when Mr. B. N. Banerjee, Presiding Officer retired and the other when Sri S. N. Bagchi, the then Presiding Officer retired from service. This contention could not also be accepted. It was true the Ministry of Labour made the appointment under Section 7B, Section 7A provides that the appropriate Government by notification in the Gazette constitute one or more industrial tribunals for the adjudication of the industrial dispute relating to any matter specified in the Second Schedule or the Third Schedule of the Act. So, it is for the appropriate Government to constitute one or more industrial tribunals. Similarly, Section 7B provides the Central Government by notification in the Gazette constitute one or more National Tribunals for adjudication of the industrial dispute which involves question of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by such dispute. It was on the basis of Section 7B that the appointment of Sri S. N. Bagchi and myself was made. The Government had chosen to constitute an Industrial Tribunal at Calcutta under Section 7B and vested the Presiding Officer of that tribunal to adjudicate upon the reference which was found to involve a question of national importance under the present Reference. The action of the Government in the matter which involves a question of national importance cannot be questioned specially in view of the provisions of Section 9 of the Industrial Disputes Act. Any way, Central Government either can appoint a Presiding Officer under Section 8 in case there is a permanent vacancy of an officer or the Central Government can under Section 7B constitute one or more National Tribunals as an when required to dispose of any particular reference which was found to be of national importance. The Government can, therefore, act either under Section 7B or under Section 8. The Section 8 does not provide for any publication of the appointment in the Official Gazette but both Section 7A and 7B provide that the constitution of the Tribunal shall be by notification in the Official Gazette. Section 8 also provides that the appointment of a person shall be "in accordance with the provisions of the Act" which is an indication that the appointment shall be made by the Central Government in the case of National Tribunal under Section 7B and not under Section 8. In these circumstances I find that the appointment of myself as well as that of Sri S. N. Bagchi was validly made under Section 7B constituting a National Tribunal for disposal of the reference which pertains to an important issue regarding the wages and allowances of bargemen.

14. The next contention of Sri Ginwalla is that earlier award dated 9th March 1966 on the basis of a Reference dated 4th January 1965 and a settlement between the parties dated 14th September 1965 shall be deemed to be a bar for raising the present contention by the bargemen on the basis of reference on hand. This contention is based upon the provisions of Sub-sections (3) and (6) of Section 19 of the Industrial Disputes Act on the ground that neither the Union nor the bargemen had at any time terminated either the terms of the award or the terms of the settlement by notice in writing as required by the provisions of those sections. There is no provision under sub-section (6) of Section 19 of the Act to give notice in writing, but sub-section (3) of Section 19 provides that notice shall be in writing terminating the settlement. The concerned settlement in the dispute is Ext. M-2 dated 14th September 1965 and the other Ext. M-5 dated 7th October, 1969. Ext. M-2 settlement was between the employers and the union. The Shipping Company and the CRTA and others signed the settlement on behalf of the employers and on behalf of the employees the office bearers of the union affixed their signatures on it. Paragraph 1 of the settlement states that the union agrees that the Inland Water Transport crew (*i.e.* employees of the CRTA) are not dock workers and that the interim recommendations of the Central Wage Board as regards basic pay and dearness allowance for dock workers do not apply to the members of the crews employed by the members of the CRTA. However, the employers paid enhanced dearness allowance to the bargemen under the settlement. It is contended on behalf of the employers that in view of the agreement that the bargemen are not dock workers in Ext. M-2 settlement, they are now precluded from contending that they are dock workers on the basis of the recommenda-

tions of the Central Wage Board. In this regard it has to be stated that this settlement was arrived at pending the decision by the Central Wage Board as to whether the bargemen are dock workers or not. The Government of India set up a Central Wage Board under its Order dated 13th November, 1964. That Board announced interim relief to the dock workers on 27th April, 1965. Final report of the Wage Board was submitted only on 29th November 1969 and the Government of India accepted the recommendation of the Board by its resolution dated 28th March 1970. So, it is clear that the settlement Ext. M-2 was a part of unfair labour practice imposed by the employers to commit the union to an agreement that the employees or the members of the CRTA are not dock workers. This settlement is anti-labour and cannot be used as against the workmen for coming to the conclusion that they are not dock workers.

15. The next settlement evidence by Ext. M-5 dated 7th October, 1969 was arrived at between the employers represented by the Shipping Company and other barge owners on the one side and the union of the bargemen on the other. It is in respect of this settlement the contention is raised that without issuing a notice terminating the terms of the settlement the reference in question could not be entertained. Similarly, it is contended that the Ext. M-3 award dated 9th March, 1966 cannot also be overlooked or ignored without terminating the terms of that award by sending a notice to the parties concerned. The award, Ext. M-3, was made in pursuance to a reference dated 4th January, 1965 to the Second Industrial Tribunal, West Bengal, on the basis of an Order passed by the Labour Department of the Government of West Bengal. The reference was for the fixation of grade and scales of pay for Dandees and Majhis as well as for fixing their working hours and gratuity. The tribunal fixed the Dandees scale of pay as Rs. 40—1.50—70 and that of Manjhi as Rs. 60—2—90 raising it from the scale of pay of Rs. 30 to Rs. 60 and Rs. 50 to Rs. 80 respectively. That award came into force on 1st March, 1966. It is admitted that there was no notice sent by the union to the employers terminating either the settlement, Ext. M-5 or the Award Ext. M-3. The High Court of Calcutta considered this aspect of the contention as to whether notice was necessary or not in the Judgment which arose from the same reference. That judgment is marked as Ext. W-8. The High Court in relation to Ext. M-5 settlement stated as follows:

> "Excluding the said second settlement of 25th July, 1970 [present Ext. M-5(a)], in my opinion the first settlement that has been referred to in the affidavit of Makhan Lal Chatterjee the settlement of 7th of October, 1969 clearly stated that it was agreed that the determination of the final wage structure of the workmen of the Calcutta River Transport Association and the other demands of the Unions would be discussed on the Industry-wise basis. That discussion could not be made if 1965 settlement was valid and binding. Therefore para 4 of the said settlement of 1969, in my opinion, read clearly and fairly imply a notice on the part of the employees to terminate the settlement of 1965 and it must be considered that the intention was to terminate the said settlement of 1965 with reference to that date, that is to say, the date of 7th October, 1969. There is another aspect of this matter. In view of para 4 of this settlement, to which the petitioner was a party, and in view of the subsequent settlement dated 25th of July, 1970 the petitioner, in my opinion is not entitled to agitate now the question that no notice was given or that the settlement was still binding between the parties."

The above observation is conclusive to show that the settlement in question is one of those settlements which were arrived at between the parties beginning from 14th September, 1965 and ending with 18th June, 1974 which from time to time gave interim relief to be paid to the bargemen and that no settlement could be regarded as permanent settlement between the parties settling all the disputes. There is no notice prescribed in law as required by Sub-sections (3) or (6) of Section 19. Whether it is an award or a settlement there must be some indication that either of the two parties contemplated or wanted to terminate the award or settlement. However, in Indian Link Chain Manufacturing Ltd. *vs.* The workmen, 1971 II LLJ 581. Supreme Court stated, "It is true that though a written notice can be spelled out of the correspondence, there must be a certainty regarding the date on which such a written notice can be construed to have been given because a settlement notwithstanding such notice continues to be in force for a period of two months from that date." But in cases where what is sought to be done is strictly in conformity with the terms of the settlement in compliance with it and for the purpose of giving effect to it and not to enforce something which is in derogation to the settlement or contrary to the terms thereof or inconsistent therewith, there is no question of any notice being given to terminate the settlement (in this regard see Paresh Chandra Roy *vs.* Life Insurance Corporation of India, 1970 Labour Industrial Cases, 530). It is clear

therefore that whether it is Ext. M-2 or Ext. M-5 or M-5(a) settlement, as well as Ext. M-3 award, the intention of the parties must be clear to show that the union did not rely upon them as a final settlement of the dispute in question. By a series of settlements the parties have agreed that they shall abide and follow the result of adjudication by the National Tribunal in respect of the reference which both parties jointly agreed to be referred to the Tribunal at the instance of the Government of India. No question of any notice in the circumstances of the case arises in view of the conduct of the parties in this case. It has never been a case of the parties that the wages and allowances had been permanently fixed under Ext. M-3 award. The dispute had arisen thereafter as regards the wages and allowance of the bargemen under the recommendations of the Wage Board. It was after the award in Ext. M-3 that Exts. W-10 and W-10(a) and Ext: M-8 demands had been made to the employers. It is sufficient to say that these demands had been made under different set of circumstances and conditions which governed the parties at the time.

16. The reference in question is in two parts, one part relates to the wages and allowance due to be paid to the bargemen on the basis of the recommendations of Wage Board and the other part relates to wages and allowance to be fixed in favour of bargemen on the basis of the demands to their employers independently of the recommendations of the Wage Board. It is argued on behalf of the employers that the second part of the reference cannot be considered by this tribunal as under the settlement, Ext. M-5(a) dated 25th July, 1970 what was sought to be referred to the tribunal was only the dispute relating to the implementation of the recommendations of the Wage Board for Port anad Dock Workers and not the general claim by the bargemen for enhancement of their wages and allowances by fixing a wage structure. This argument has no force. First of all, both parties have agreed in Ext. M-5(a) settlement that the Government shall refer the dispute to an appropriate tribunal and that right is left to be decided by the Central Government. The Central Government has now referred the entire question to this tribunal. It is also in evidence that the union had made direct demands to the employers on the strength of Exts. W-10 and W-10(a) and Ext. M-8 that wages and allowance were to be enhanced. At that time the recommendations of the Wage Board did not come into operation. The Government of India accepted the majority recommendations of the Wage Board only with effect from 28th March, 1970. Exts. W-10 and W-10(a) and M-8 had already been issued by the union demanding enhanced wages and allowance to their respective owners of barges. It cannot be said that the union had given up their claim for enhancement of wages and allowance apart from their claim under the recommendations of the Central Wage Board. The learned Counsel on behalf of CRTA has relied upon a decision for the proportion that without a demand being made by the workmen there shall not be any industrial dispute to come into existence. That decision is reported in Sindhu Resettlement Corporation *vs.* Industrial Tribunal Gujarat, 1968 I LLJ 834. That decision has no, application in this case. That dispute did exist in this case. That dispute was communicated to the concerned employer at appropriate time and reference in question was made thereafter. I find, therefore, that the reference is valid in respect of both the disputes which are the subject matter of the reference. The union is justified in basing their claim upon their right for enhancement of wages and allowance independently of the recommendation of the Central Wage Board in addition to their claim that they are entitled to get wages and allowances on the basis of the recommendation of the Wage Board.

17. I have already pointed out that the Central Wage Board was constituted by the Government of India on the strength of its order dated 13th November, 1964. It consists of a Chairman, Independent members, members representing the employer and members representing workers. The terms of reference was to work out wage structure of the Port and Dock workers. In awarding a wage structure the Board was directed to take into account the character of the Port undertaking, their obligation to provide adequate port facilities necessary in a developing economy, need for uniformity in the rates of emoluments and benefits of employees doing similar jobs at various major ports, the requirements of social justice, the need for adjusting wage differentials in such a manner as to provide incentive to workers for advancing their skill and the effect of the wage structure so evolved on the cost of port service. In the explanation to the resolution for the order of appointment of the Board it was provided that in applying the system of payment by results, the Board shall keep in view the need for fixing a minimum (fall-back) wage and also to safeguard against overwork and undue speed. The Board travelled widely in all the States and took evidence of parties; and heard representatives from various institutions and made out a report which is marked as Ext. W-1. The interim relief had been announced by the Board on 27th April, 1965. The official report was submitted to the Government on 29th November, 1969. The Government of India by its resolution dated 28th March, 1970 accepted the unanimous and

majority recommendations of Board on matters covered by the items referred. Following this report the Government of India appointed a 9-Man Expert Committee for the Calcutta Docks under the Chairmanship of Sri N. N. Chatterjee, the then Joint Secretary, Ministry of Labour, Employment & Rehabilitation (Department of Labour & Employment), by their letter dated 11th October, 1968 to enquire into the working of Calcutta Dock. One of the terms of reference was to examine in the light of experience how far the categories covered by the registered and the unregistered schemes are appropriate and whether they require any modification; (ii) to examine further whether any categories not covered by either of the two schemes should be brought within the scope of these schemes; and (iii) to examine and recommend how flexibility in employment to ensure reasonable equality of opportunity for work amongst different categories can be achieved. The report of this Committee was received by the Central Government on 9th August, 1969. The Government by its Order dated 26th May, 1970 accepted all the recommendations made by the Committee for Calcutta Dock. The Committee however expressed the following remarks as against the "bargemen" working in the port of Calcutta:

> "Bargemen are engaged more in the transport of cargo rather than in its handling, and they therefore do not fit in with our definition of dock workers. They are also workers who have to be attached to or employed at particular barges and are not therefore under-employed. We recommend that the Government should make an early investigation into their conditions of services, emoluments, etc. which are stated to be highly unsatisfactory. (Unanimous)."

18. It is also relevant to point out that the Government of India by their order dated 26th May, 1970 had requested the Calcutta Dock Labour Board and the Commissioners for the Port of Calcutta and concerned employers to implement expeditiously the recommendations of the Expert Committee in the light of the observation made by the Government. It is also relevant to point out that the Joint Secretary, Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) by a letter dated 15th June, 1970 addressed to the Secretary to the Government of West Bengal, Calcutta drawing his attention to the terms of reference under the Tripartite Expert Committee for Calcutta Dock and the recommendations of the Committee pertaining to bargemen and pointing out *inter-alia* that the Barge crew did not come under the term "Dock workers" as alleged both by the Central Wage Board as well as by the Tripartite Expert Committee and requested the State Government should consider the question for setting up a Committee for Bargemen for Calcutta Port and to keep the Central Government informed of the developments. It has to be said that in spite of the State Government's inaction to take up the issue for the determination of the wages and allowances, the parties thought it proper to approach the Central Government to refer the dispute to a National Tribunal. It was accordingly that Ext. M-5(a) settlement came into existence. The National Tribunal is therefore expected to consider whether the Bargemen referred to in the Reference are Dock workers within the meaning of Section 2(b) of the Dock Workers (Regulation of Employment) Act, 1948.

19. Section 2(b) of the Dock Workers (Regulation of Employment) Act, 1948 (Act. 9 of 1948) defines Dock workers as follows:—

> " 'dock workers' means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargoes, or work in connection, with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port";

Section 2(c) defines 'employer' as in relation to dock worker, means the person by whom he is employed or to be employed as aforesaid. "Cargo" is defined in Section 2(aa), 'cargo' includes anything carried or to be carried in a ship or other vessel. Section 3(7) of Indian Ports Act, 1908 (Act 15 of 1908) defines "vessel" includes anything made for the conveyance mainly by water of human beings or of property. In Calcutta Port Rules, "vessel" includes every description of water craft other than a "sea plane" on the water, used or capable of being used as a means of transport on water. In paragraph 4.2.91 of the Report of the Central Wage Board for Port and Dock Workers at Major Ports which would hereinafter be referred to as "Wage Board" states that the bargemen employed by the private agencies are known as boatmen in some ports, and bargemen or lightermen in others. In Bombay they are generally designated as tindels and khalasis In Calcutta they are known as dandis and majhis. In paragraph 4.2.101 it is alleged that there are about 15,000 bargemen in Calcutta who are mostly employed by the members of River Transport Association. At minimum of the scale the monthly total wages of dandis and majhis were Rs. 121 and Rs. 141 respectively. The terms of reference are set forth in paragraph 6.1 of the Wage Board report in which it is pointed out that the term "employee" as understood by them will exclude Class I and Class II officers but cover the following (i) Persons employed by major port authorities, (ii) Employees engaged by the dock labour boards and their administrative bodies irrespective of their nature of work and place of

posting, (iii) Dock workers, as defined under the Dock Workers (Regulation of Employment) Act, 1948, (iv) Employees, employed by listed employers, etc. Under the head "Dock Workers" in paragraph 6.6 the Board admitted that they are bound by the definition of dock workers as defined in the Dock Workers (Regulation of Employment) Act, 1948 and they came to the conclusion that the terms of reference bring within the ambit of the Wage Board a large number of categories of dockers, Stevedors workers and workers engaged for handling various types of cargo which according to them are admittedly dock workers. The Wage Board was obliged to apply its recommendation to the crew of barges transporting iron ore from loading points on the river of Murmagao Port irrespective of the fact whether they are dock workers or not as defined in the Dock Workers (Regulation of Employment) Act, 1948. The Labour members of the Board urged that many other categories employed should be included within the definition of dock workers. The definition of Dock workers in Act 9 of 1948 was not adhered to by the Wage Board. There was no explanation forthcoming why that definition was not taken into account. Port is defined in Section 2(q) in Act 38 of 1963 and in Section 3(4) of Act 15 of 1908. Consistent with those definitions the Calcutta Port Rules defines "Port of Calcutta" means the port of Calcutta as defined in the notification of the Government of Bengal. In the same rule the words "Port" is defined as means the Port of Calcutta and the navigable river and channels leading to it in which the Indian Ports Act, 1908 is for the time being in force. The definition of a vessel is seen in Act 15 of 1908. The argument of the employers that if the bargemen is included within the definition of dock workers a peculiar situation will be arising when the lorry transport workers will also demand that they will come within the purview of dock workers. Such contingency need not arise in view of the definition of the vessel in Act 15 of 1908. Vessel means conveyance by water human being or a property. So, a lorry or railway transport intended to be used for carrying cargo to and fro the Port for the purpose of export or import does not come into the picture. The men employed in the transport work in lorries and Railways cannot be regarded as Port workers. They may be employed in the lorry or railway but could not be regarded as dock workers. The definition of dock workers includes only barge employees or other vessels intended for the receipt or discharge of cargo within the port. Both the Wage Board as well as the Expert Committee presided over by Sri N. N. Chatterjee have missed the definition of the word "dock workers" as defined in Act 9 of 1948 read with the definition of "vessel" in Act 15 of 1908.

20. The Wage Board described crew of boats, lighters and barges wholly engaged in dock and stream whose work is connected with loading and unloading a vessel. The word 'wholly engaged' does not find place in the definition of Dock Workers in Section 2(b) of Act 9 of 1948. It was consistent with the definition of a Dock workers by the Wage Board that the Chatterjee Committee referred to the bargemen in its observation contained in Ext. M-6 report. We have to take into consideration the evidence and other circumstances in the case to establish that the bargemen are dock workers. We cannot rely on the definition which was furnished by the Wage Board must less the observation which Sri Chatterjee made in Ext. M-6 report. If the very nature of work contained in the definition of Dock Workers in Section 2(b) of Act 9 of 1948 is examined with reference to the bargemen's work it is established beyond dispute that the bargemen comes within the definition of Dock worker. The fact that some vessels ply beyond the Port of Calcutta does not in any manner change the character of the work of a bargemen. It may be noted that neither the CRTA nor the BRTA made any averment in their written statement that their barges ply beyond the Port of Calcutta. So any amount of evidence adduced on their side cannot be looked into in the absence of any pleading to the effect that their barges ply beyond the Port of Calcutta. It is true that Shipping Company made some averment in their written statement to the effect that their barges ply beyond the Port of Calcutta. The documents produced in support of the contention however do not successfully prove that they had to go to places outside the Port of Calcutta to discharge their cargo or to carry the cargo from distance places to the Port of Calcutta. Any way, assuming for the purpose of argument that some of their bargemen had been taken to places like Assam through the river being incharge of barges that circumstance alone does not lead to the conclusion that they are not dock workers because of the fact that they had been doing loading and unloading work within the Port. It is admitted that the bargemen are attached to their barges. They have made it their second home. They live in the barges, cook food and sleep there and stay in the barge for 24 hours of the day. So, they form part and parcel of the dock workers.

21. In this regard it is necessary to examine some items of oral and documentary evidence. Before dealing with the evidence it is necessary to consider the extent of the Port area and the jurisdiction of the Port Trust over that area with a view to arrive at a conclusion whether the bargemen ply within that area. Sub-section (4) of Section 3 of the Indian Ports Act defines Port as includes also any part of the river or cannel in which this Act is for the time being in force. Sub-section (8) provides that major port means any port

which the Central Government may by notification in the Official Gazette declare or may in any time have declared to be major port. Section 2(q) of the Major Port Trusts Act, Act 38 of 1963, defines "Port" means any major port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette and until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act. "Indian Ports Act" is defined as the Indian Ports Act, 1908 in Section 2(j) of Act 38 of 1963. It is admitted that the Central Government had issued a notification. Ext. W-11 dated 12th November, 1969 is the Government of India's notification regarding port limit. The relevant portion of Ext. W-11 reads:

"PORT OF CALCUTTA

(a) On the North—A line drawn due east across the River Hooghly from a pillar at the southern boundary of Messrs D. Waldie & Company's Chemical Works and Distillery at Konnagar in the district of Hooghly on the right bank of the river to a pillar on the left bank of the river near Panihati in the district of the 24-Paraganas.

(b) On the South—A line drawn from a masonry pillar placed at the mouth of the Budge Budge Khal to a pillar on the right bank (Howrah side) of the river Hooghly, bearing north west of the first named pillar.

The limits of the Port include to the east and west of the River Hooghly :

(a) that part of the River Hooghly and the shores thereof as are within 45.7 metres of high water mark at spring tides;

(b) all lands, sheds, wharves, quays, railway sidings etc. comprised in the area occupied by the Kidderpore Docks, King George's Dock and Petroleum Depot at Budge Budge and the adjoining works constructed for the purpose of such docks and installations;

(c) that part of Tolly's nala as lies to the west of line drawn across the nala 7.6 metres to the west of Hastings Bridge.

The navigable river and channels leading to the Port of Calcutta shall be as follows:—

On the North—400 metres down the River Bhagirathi from the centre line of the Jangipur barrage and 0.8 kilometre upto the River Jalengi from its confluence with River Bhagirathi.

On the South—the parallel of latitude 20° 45' N.

The limits of the said river and channels include all parts of the navigable channels which lie between the longitudes of 87° 40' E and 88° 40' E of River Hooghly and all parts of River Bhagirathi and Hooghly between the northern and southern limits below the highest point reached by ordinary spring tides at any season of the year for tidal portion, and the bed of the river habitually covered by water at any time of the year for the non tidal portion."

In the light of the above notification of the Port Trust has published a plan of the Port area over which the Port Trust exercise jurisdiction. The northern limit of the Port reaches upto Biswanathpur and the southern limit is in channel latitude 20° 45' N-00". This description is consistent with Ext.W-11 notification. It is nobody's case that the jute mills out of which the bargemen collect cargo or deliver back cargo from Port to the jute mills are beyond the limits of port area. The barges are ordinarily towed by launches to and fro the site of the port and the site of the jute mills. The barges are ordinarily used for carrying jute goods and they also carry other goods when they are imported through ships. The work of the bargemen is described by several witnesses in the case in relation to their duty involved in the export or import of cargo. When the bargemen ply within the port area and perform the work of loading and unloading of cargo in and out of the barges, there is reasonable ground to hold that they are Port and dock workers.

22. On behalf of the union some documents are produced to show that the bargemen are attached to the port. They are marked as Exts. W-12 to W-26. They are the licences issued to the Majhis and Dandees including tally books which are maintained by the Majhis. Evidence had been given by the bargemen as to the application of the tally books in the matter of loading and unloading of cargo in and out of the barges. The only conclusion which can be made out of the use of these documents is that the bargemen were attached to the port and that they can be regarded as dock workers as defined in Act 9 of 1948.

23. There is large volume of oral evidence in the case to hold that the bargemen have been employed as dock workers in loading and unloading cargo. First of all we will deal with the evidence on the side of the Union. WW-2, Makhan Chatterjee is the General Secretary of the Calcutta Port Shramik Union. He was conversant with several aspects of the working of the port in various departments. He had given a clear description of the work of majhis and dandees in relation to their work in the port area. He states in his evidence as follows :

> "In the barges two categories of workmen are directly employed and they are majhis and dandis. Majhis is the headmen of the barge. The crew or the dandis work under his direction. The Majhi maintains record of cargo and also a book which is the tally book. In the tally book they maintain the record of cargo actually loaded. The dandis physically handle the cargo, do the slinging and unslinging of loads, and stack the cargo into the barges or lighters. The launch crews—actually though these are self-propelled power crafts and called launches in common parlour, they are virtually tugs. They tow the barges from one place to another. Without the launches the barges can not move and the socalled launches are involved in movement of cargo intended for shipment or for despatch of the cargo unloaded from the ships."

WW-3, Samir Ahmed is a Majhi working in the Shipping Company. He has been in service since 1969. He stated in his evidence as follows:

> "Loading, unloading, export cargo, import cargo, taking the barge to the jute mill, after the export jute is being checked by the Customs people, these are being slinged and then it is being taken at the jetty and then it is being put into the barge. Dandis after opening the slings arrange the goods as per the direction of the Majhis. After the loading is done the barge is taken to the Mooring along side and overside the ship by the launches. After this the ship used to send the sling through the derrick and the dandis as per direction of the Majhis hook the goods with the derrick rope and then it is taken on the ship. On the ship the dock labour board workers are unslinging the goods from the derrick. Similarly the bargemen also work in connection with the import cargo. The import cargo, like cement, machine, wheat etc. whatever may be the goods, the dock labour workers are slinging the same and hanging it with the hook of the derrick and then it is being sent to our barge. When the cargo comes to the barge the dandis as per direction of the majhis are unslinging the goods and arranging the same inside the barge."

WW-4, Sk. Samsul is working under an employer who is a member of the BRTA. He has also given evidence as follows:

> "For import there is much work for the B.R.T.A. We are keeping the empty boat along the ship. The dock labour board workers are slinging the import goods on board the ship and then sending the same by crane to the boat. The dandis are unslinging the goods on the boat and the Majhis is keeping the tally. Sometimes there are shifting of goods from one ship to another and then also we are doing the same work. Sometimes we are to take goods from the Port itself where the ship is unloading the goods. When the goods are coming by lorries, like tea chastes, etc. those goods are being unloaded and loaded by the Port workers themselves. Those goods are usually kept in the Port godown. The Port workers are carrying the goods to the ship. The goods are being slinged by the Dock Labour Board workers with the jetty side cranes and then the cranes are lifting the goods on board the ship. The tea chastes are meant for export. The import goods, like fertilizers, are being kept in the jetty side godown. The Port workmen and bargemen are doing both loading and unloading work. The work is same. The majhis at the time of unloading are keeping tally; going to the office to give necessary information;"

WW-5 Mohd/Shariff is a Majhi, working in a Company which is a member of C.R.T.A. He states as follows :

> "The work of dandi is to unsling the goods when the same is lowered from the jute mill jetty and to stack them; to do other miscellaneous odd jobs as per direction of the majhi; to tie up the boat, etc. At the ship the dandi is

to sling the goods and to unload the same. In the ship loading and unloading is going on. The loading and unloading is being done of the goods both imported and exported. Export goods are gunny, carpet, tea, roll, bagging, etc. When the barge is placed along side the ship the dock labour board workers are sending crane to the barge and the dandis on the barge are slinging the goods; then it is being taken on board the ship. When the imported goods are being sent to the barge by the dock labour board workmen the dandis are unslinging the same and arranging it in the barge. The loading and unloading both are being done on along side the ship and opposite side also. The work which is being done by the dandis the same work are being done at the jetty by the Port workers.".

WW-6, Sri Nanda Lal Mukherjee, is the Chief Clerk of the Dock Labour Board, Calcutta. In answer to the questions he stated as follows :

"Ques. : Will you please state in details what are those works done by the bargemen?

When a vessel brings import cargo in the port, they are berthed at the Port trust sheds and to mooring and buoys, when import cargo is being discharged from the vessel the C.D.L.B. workers handle the cargo and they sling the cargo that is their job. When it is being discharged on the quay line *i.e.* in the sheds they are being handled and unsling by the port trust workers; and then such type of import cargo are being discharged into the barges the same operation as it is being done in the case of discharge by the dock labour workers they do particularly the D.L.B. workers do the sling jobs and the bargemen they do the unsling jobs and stack the cargo in proper places into the barges.

Now, in the case of export cargo the rivers process is being done. When it is from the shed of the Port trust they do handle the jobs from the shed to the quay line and they sling the cargo and it is being unslinged by the C.D.L.B. workers into the boats and stacked by them. In the case of over side cargo it is, when it is lifted from the barges the bargemen they do stack the cargo and they first sling the cargo to be lifted from the hatch of the barge and is being taken into the holds of the ship and it is unslinged and stacked by the C.D.L.B. workers.

Ques. : Mr. Mukherjee, will you please give the full name for C.D.L.B.?

It is Calcutta Dock Labour Board.

Ques. :Will you please tell if you know what are the duties of the Majhis ?

We are concerned with the boats and we take all of the workers those who work in the barges as majhis, some of them are called dandis too and they are vandharies, but we have seen all of them to handle the jobs."

WW-7, Ajit Ranjan Mukherjee, is an employee under the Traffic Manager's office in the Calcutta Port Trust as Assistant Superintendent, Lighterage. He had also answered in reply to questions put to him as follows :

"Ques. :Will you please state what the functions of lightermen? How the lightermen function?

You see when the import goods are coming they are slinged inside the hold of the hatches. They are then lifted by ships derrick or crane and then lowered into the boats. Slings are off loaded from the hook of the crane or derrick and then it is unslinged by them and then they take away the cargo and put back the sling. In case of the export and empty sling is lowered on the boat and they are handled according to the nature of the cargo and sling it and hook it which go on board the ship and it is off loaded by the labour there on the ships. There is another function also. Sometimes when the ships are in hurry these goods, I mean the export goods, when the boats cannot be taken overside then the goods are off loaded by a shore crane and directly put by another ship crane into a hold of the hatch. These are the normal functions of the boat."

MW-1, Dilip Kumar Bhattacharjee is the Manager of one Paul & Chakravorty Pvt. Ltd., which is a member of the C.R.T.A. Questions put to him and his answers to those were as follows:

"Ques. : Mr. Bhattacharjee, you agree with me that the bargemen belonging to the 900 barges in the industry do the slinging and unslinging operations in the barge, what their counterpart do in the ships as the dock labour board workers in connection with export ?

The bargemen do the slinging and unslinging work in the barge but not to that extent as are done by Dock Labour Board people on board the vessel.

Ques. : What do you mean by 'not to that extent'—will you please explain?

The real difference between the two jobs is that of skill.

Ques. : Have you ever got any complaint against any of your bargemen as to their deficiency in skill, necessary for slinging and unslinging, for the purpose of export loading?

The bargemen are expected to discharge their duties as bargemen and not as dock workers and so the question of efficiency and complaint do not come."

MW-4, Sri Mathura Prasad who is the Secretary of West Bengal Cargo Boat Man's Association, has been examined on behalf of the employer. He stated even in examination in chief that Majhis and Dandees do both slinging and unslinging. Then he stated that when the materials are loaded and unloaded Majhis do the tally work.

24. The above evidence both on the union's side as well as on the management's side establishes that Majhis and Dandees have been doing similar work of other Dock Workers employed by the Calcutta Dock Labour Board in the matter of loading and unloading of cargo in and out of the barges. The Wage Board, however, restricted the scope of the word "Dock worker" with a view to exclude the bargemen out of the definition of dock worker as defined in Act 9 of 1948. In paragraph 4.1.1 of the Wage Board report the Board stated that the definition of dock worker in Act 9 of 1948 was very wide and may be construed to mean all categories of workers working in a port or in the vicinity, if they are handling cargo. But once the bargemen comes into the purview of the definition of dock workers as defined in Act 9 of 1948, there was no ground for excluding bargemen from that definition. They had to admit that bargemen are also working in the Ports. The most prominent activity in a port is cargo handling and it is in this work that a lot of labour is employed. In most of the ports a fairly large quantity of cargo is handled overside in the docks or in the stream by lightermen. This aspect of the case had been understood by the members of the Board. They had given a restricted meaning to the definition of dock worker. WW-2 had referred to in his evidence about Ext. W-9 and W-9(a). Ext. W-9 is a letter dated 9th September, 1970 from the Assistant General Secretary of International Transport Workers' Federation, London. Ext. W-9(a) dated the 23rd September, 1970 is also a similar letter. The authenticity of these letters was not disputed. It is pointed out in Ext. W-9 that the British definition of dock workers, is word for word the same as the Indian. So, according to that definition it was pointed out that it covered workers on lighters as dock workers as far back as 1920 when the first registration schemes for dockers were introduced. As regards the definition of Port of London it was pointed that Port has all those facilities, both on the river side and in enclosed docks, which are employed in the handling of ships and cargo between a point on the River Thames about twelve miles west of the centre of London to the mouth of Thames—a distance of about ninety miles. According to the statement all lighters engaged in cargo handling between those points must be registered with the Port of London Authority, a statutory body.

25. The definition of the dock work has to be understood in the light of not only their work in the port but also consistent with the definition of cargo, vessel, employer and the port in the Acts referred to above. The terms, loading, unloading and movement of persons employed in any port in connection with the preparation of ships or vessels for the receipt or discharge of cargo would indicate that the work of the bargemen came rightly within the definition of dock workers as defined in Act 9 of 1948. There is plenty of evidence in the case that their main work and activity is within the port. The fact that one of the companies had made use of them to go beyond the port by itself does not in any manner bring down their description to make them less as dock worker. The Shipping Company has caused to be produced Ext. M-44. They are printed copies of bills. Most of these bills came into existence after the controversy had set in. It is true that there are some bills of the years 1964 and 1965. But it is not possible from those bills to make out whether the Shipping Company used barges or other crafts for the purpose of carrying goods to distant places. The inner-foils of these printed slips had also not been produced. There is nothing to show that they are genuine slips maintained by the persons who issued the same. In the absence of correct materials it is difficult to

hold that the Shipping Company had taken its barges outside the Port limits. Any way, even assuming that they had taken the barges outside the Port limits that circumstances alone will not make the bargemen less Dock workers in the facts and circumstances of this case. I have gone though the evidence in its entirety and I am satisfied from the available evidence and records that the Wage Board as well as Chatterjee Committee deviated from the definition of the dock workers as defined in Act 9 of 1948 and came to a wrong conclusion which is inconsistent with the definition of the dock worker in that Act with the result that the bargemen were deprived of their due share of wages to be paid to them on the basis of the recommendation they made in the report of the Wage Board. I am satisfied that the evidence in the case leads to the only conclusion that the bargemen are dock workers within the meaning of dock workers as defined in Act 9 of 1948. It follows therefore that the bargemen would be entitled to all the benefits by way of wages and allowances which the Wage Board recommended in their report.

26. The unanimous recommendation of the Wage Board with regard to the wages and allowances of bargemen is contained in item 7 in paragraph 7.2.108 at page 163 of the Wage Board Report. It reads as follows :

"7. Bargemen (unanimous recommendations)

(i) The new pay scales of barge crews of non-propelled crafts wholly engaged in docks and streams, whose work is connected with loading and unloading of vessels and other process of port and dock work and new pay scales for crews of launches for transporting port and dock labour/staff in port waters and tugs for towage of barges, lighters, etc. in port waters, in connection with loading, unloading, movement or storage of cargo or work in connection with the preparation of ships or other vessels for receipt or discharge of cargoes or leaving port, should be as follows:

Category	Port	New scales
		Rs.
1. Khalasis	***	
2. Dandis	Calcutta	104-2 116-3-140
3. Tindels	***	
4. Majhis	Calcutta	115-3-136-4-160

(ii) The new pay scales of the categories of bargemen doing similar work at the ports of Cochin and Mormugao should also be the same as the above mentioned new pay scales.

(iii) The new pay scales of categories other than mentioned in (i) who are covered by the definition of 'dock worker' under the Dock Workers (Regulation of Employment) Act, 1948 should be the same as have been recommended by the Board for similar categories of employees of port authorities engaged on similar types of vessels'.

27. Before considering the pay scales of the bargemen it is necessary to point out at the outset that the union did not establish by evidence or otherwise that bargemen other than Majhis and Dandees are covered by the reference in question. The dispute as set out in the reference is against the owners of barges, lighters and boats. The owners of launches or steamers have not been made parties to the reference. So, it is not fair to fix wages of the employees of steamers or launches. The parties have understood as and when the evidence was let in that they were concentrated on wages and allowances of Majhis and Dandis. Names of other employees in respect of lighters or boats had not been mentioned though WW-2 mentioned in his evidence the names of other categories of bargemen. But, neither WW-2 nor other witnesses stated anything regarding the nature of work to which the other workmen were employed or the emoluments which they were to get as bargemen. In the absence of any evidence on union's side the employers also did not think it necessary to give any counter evidence. All the statements filed in this case either by the employers or by the union related only to the pay scales and allowance of Majhis and Dandis. It is true the word "bargemen" as used in the Wage Board report takes in other categories of bargemen. But, it is for the union to establish by acceptable evidence that the other bargemen were also equally employed in the port with similar work or different occupation in relation to the barges, lighters or boats. The Union did not lead any such evidence. In the nature of the reference made in the case and other circumstances I am constrained to hold that the wage structure to be fixed in the award under the Reference in the case is only for the benefit of Majhis and Dandis and none others.

28. We have to consider next as to the pay structure of Dandis and Majhis. This is based upon the consideration of the Wage Board Report. It is clear from the report of the Wage Board that what is sought to be given as wages and allowances to the bargemen was the minimum wage and not fair wage. In paragraph 7.1.19 of the Report of the Wage Board the background of the work which the Board had been doing after it was formed is given. In paragraph 7.1.21 the prevailing rate of minimum wage was described. It was found to be Rs. 175/- so far as it relates to the minimum wage structure of the employees of the Port authorities and Dock Labour Board at various ports in India. The Board came to the conclusion in paragraph 7.1.22 that the sum total of minimum wages of the dock workers was also the same as the other workers employed in the docks. The Port and Dock workers had demanded minimum wage on the basis of the need-based wage resolution of the 15th Indian Labour Conference. The quantum of money demanded by the various Federation is, however, not uniform. Besides the D.A. to be linked with consumer price index No. and C.A. and H.R.A. at rates higher than the present rates and their extension to the Ports where the employees are not being paid these allowances, a basic wage varying between Rs. 190 and Rs. 300 per month had been demanded. In support of the demand of the dock workers they submitted estimates of need-based wage on the basis of the 15th Indian Labour Conference, with vegetarian as well as non-vegetarian diet schedules. All these estimates were submitted in reply to the questionnaires which the Board issued from time to time and in the year 1965, they were mostly based upon the average prices of 1964. Since then the Index has risen by 55 points and consequently the estimates would be sufficiently higher So far Calcutta was concerned the minimum estimate on 1964 price in respect of non vegetarian diet was fixed at Rs 241 and vegetarian at Rs. 225. Since most of the employees were of non-vegetarian diet it was decided that the rate of non-vegetarian diet shall be taken as the basis for estimating the minimum requirements (see paragraph 7.1.23 of Report). On the basis of the above the Wage Board came to the conclusion that on the average prices prevailing at major Indian centres during the second half of 1964 for which the average All India Working Class Consumer Price index number was 1960. The estimate of minimum wage was Rs. 197/- per month for West India, Rs. 183/- per month for East India and Rs. 202/- per month for South India. So, arithmetically stepped corresponding to the index number 215 these estimates would be much higher (see paragraph 7.1.24 of the Report).

29. Labour had advanced number of reasons for demanding higher wages, as according to them the increase in the wages of Port and Dock workers in the past had been regarded as only marginal and not in keeping with nature of work or rise in the cost of living index. The employers, on the other hand, as pointed out in paragraph 7.1.26 of the Wage Board Report, the wage structure has further improved after the grant of interim relief and as such it was argued that the wage structure in the Ports which was evolved in 1961 jointly by the employers and labour should be regarded as adequate and fair and that there was no change necessary. So, as pointed out in paragraph 7.1.29 the Board discussed the question of minimum wage in the Port and Dock industry in a number of meetings. In paragraph 7.1.30 the Board stated as follows:

> "In view of our terms of reference, we are mainly concerned with evolving a wage structure based on the principles of fair wages as set forth in the Report of the Fair Wages Committee. The ideas about the principles of fair wages, etc. enunciated by this Committee have by now fairly crystalised, because in the period of two decades that has elapsed since the Committee's report was published, several competent, authorities, *viz.*, Supreme Court, wage boards, tribunals, tripartite committees, etc. had occasion to deal with the application of these principles to wage problems in different industries and in connection with various types of employments. The Board need not, therefore, discuss here the various implications of the Fair Wages Committee's recommendations. We may, however, make it clear that in evolving the proposed wage structure, we have kept in view the discussions and conclusions in the Fair Wages Committee's Report."

In paragraph 7.1.31 it was pointed out that the fair wage as such has not been defined by the Fair Wages Committee. However, it has only explained its concept of fair wage by saying that the lower limit of fair wage is the minimum wage and the upper limit of it is set by the capacity of the industry to pay. It is stated further in the same paragraph that in determining the upper limit of the fair wage, the present and future financial position of the industry has to be take into consideration. Besides this, facts like (i) productivity of labour, (ii) prevailing rates of wages, (iii) level of national income and the distribution and (iv) place of the industry in the economy of the country have also to be considered in determining the level of fair wage above the minimum wage. The Wage

Board was of opinion that the concept of fair wage necessarily leads to the consideration of the minimum wage. The minimum wage is one which would provide not merely for the bare sustenance of life, but also for the preservation of the efficiency of the worker, for which purpose it should also provide for some measure of education, medical requirements and other amenities This definition of minimum wage according to the Wage Board as set out in paragraph 7.1.32 has been subject matter of interpretation by Wage fixing authorities in the past and the Board states further in the same paragraph as follows:

> "It was felt that this definition was not quite specific and an attempt was, therefore, made by those who assembled in the 15th Indian Labour Conference, held in 1957, to clarify it in terms of worker's minimum requirements by passing the Need-based Wage Regulation. This resolution has also been the subject of discussion by the various wage fixing bodies *vis-a-vis* the definition of minimum wage by the Fair Wages Committee. It is now generally accepted that the minimum wage of the Fair Wages Committee is the lower limit of the fair wage of Committee's concept and that it is synonymous with the need-based wage which has been defined in the Need-based Wage Resolution in concrete terms."

The labour urged for fixation of their wages on the basis of need-based minimum wage but employers opposed the proposal. The employers did not accept that the minimum norms laid down by the 15th Indian Labour Conference regarding minimum wage and so the labour wanted that minimum to be revised. In paragraph 7.1.34 the Wage Board stated that it was clear to them that the need-based minimum wage, or the one which approximetes to it, is not a subsistence wage and when it is under consideration, the capacity of the industry to pay cannot be ignored. So, in their attempts to evolve a wage structure based upon this concept they were conscious of the paying capacity of the port industry and this aspect had received their highest attention in the course of their deliberations. They have dealt with the paying capacity of the industry as a whole as well as of individual ports and also the financial impact of their recommendations. In paragraph 7.1.35 they have stated that they wanted to determine a minimum wage which would be considered suitable in the circumstances of the port and dock industry in the sense that while the workers got an increase in their wages, it should not impose a heavy burden upon the industry. For that purpose they had considered this question from various point of view. In paragraph 7.1.36 they had considered the minimum needs of workmen. In that occasion they took into consideration the amount of minimum wage which a worker may get in terms of the need-based wage formula of the 15th Indian Labour Conference. They got the estimate prepared on the basis of various diet schedule which they had kept in view in the course of their deliberations. In paragraph 7.1.37 they described the method of approach they made in regard to the fixation of minimum requirements of a workman. In paragraph 7.1.43 after considering the estimates they felt that if the existing parity between the wages of Port workers of Bombay, Calcutta and Madras was to be maintained a way out would be to take the average of the cost of minimum requirements in respect of these three centres. So, on the average price of 1968 it appeared that an amount of Rs. 220 per mensem would be required for a working class family of three consumption units when food requirements of an industrial worker of moderate activity are taken into account for working out the estimates. It would be more if a food of higher calorific value is taken, presuming that port and dock workers and particularly the cargo handling workers perform jobs involving greater physical effort. The National Nutrition Advisory Committee has envisaged making special additional allowance for workers in the comparatively heavier industrial occupations. As against this, at the average of all-India Working Class C.P.I. No 215 for 1968, the total minimum wage in the ports of Bombay, Calcutta and Madras was Rs. 175.30. In paragraph 7.1.44 the question which arose before the Wage Board was the extent to which the existing wage can be increased even if it is not practicable or expedient to straightway fix a wage of Rs. 220 per mensem. So, the Board considered in this connection the cost of fringe benefits which the employees get in the Port and Dock industry, prevailing rates of wages trend of rise in the wages of industrial workers in the adjoining areas, extent of erosion in the minimum wage which can be restored, national income and the importance of port and dock workers. In paragraph 7.1.49 the grievances of the labour representatives were that the Port work was more strenuous and prone to accidents and hence not to be compared with the work in a textile mill and yet the wages of the lowest textile mill worker in Bombay and Ahmedabad were higher than those of port workers (Rs. 220 p.m. as against Rs. 175.30 per mensem of the Port workers in Bombay). The employers, on the other hand, argued that in Calcutta the existing minimum wages of the port employees are higher than what the workers get in the engineering, jute and textile industries, they said that the port employees were better off because they had security of service and enjoyed several benefits, which were not available to workers in

other industries. Again in paragraph 7.1.51 the Wage Board was of opinion that a balanced view of the current wages in the various industries in the country comparing the wages of the port and dock workers with those in reasonably well-established concerns in Bombay, Calcutta and Madras, it is to be seen how far the existing minimum wage of the workers under consideration needs to be stepped up. In paragraph 7.1.53 the Board stated that the wage was also not based upon the concept of minimum wage enunciated by the Fair Wages Committee or of the need-based wage. They stated further that the employees have said that the application of the Second Pay Commissioner's recommendations meant practically no wage revision except merger of D.A. with pay and have argued that even if the food of higher calorific content is allowed in view of the decidedly strenuous nature of work, the present minimum wages in the various ports may have to be marked up by 30 per cent or so.

30. In paragraph 7.1.54 at page 131 the Board stated as follows:—

> "It is a fact that there has been a sharp rise in the cost of living since the revision of the wage structure of the port employees last took place in 1959. The cost of living has almost doubled. The Working Class Consumer Price Index No. has risen from 115 to 215 (1949-100), all-India Index of wholesale prices for food articles has risen from 115 to 223. There have been, of course, increases in the earning of the workers also due to rise in the dearness allowance, from time to time, but these increases have not been commensurate with the increases in the cost of living, as cent per cent neutralisation could not be given, even at the lowest level, wherever the D.A. was revised. Consequently, over a number of years, there had been an accumulation of erosion in the real earnings. To be fair to the port and dock workers, therefore, there is a case for restoring at least a part of the fall in their real earnings."

Finally, in paragraph 7,1.61 the Board stated that the demand of the labour members for a minimum wage corresponding to the working class CPI No. 215 was quite high. Then they stated further in the same paragraph:—

> "Even their revised proposal regarding minimum wage was Rs. 223.50 p.m. for Bombay, Calcutta and Madras consisting of basic pay Rs. 90, D.A. of 103.50, C.A. of Rs. 10 and H.R.A. of Rs. 30 p.m. Later on they felt that dearness allowance should not be higher than the basic and revised their proposal slightly by raising the basic, but the demand regarding the total minimum wage remained unaltered. Subsequently, however, as a result of discussions and persuations, the labour representatives agreed to a lower figure of minimum wage in respect of various major ports."

The Board states as follows in paragraph 7.1.62 :—

> "The employer members were not agreeable to any substantial wage increase. In fact, their earlier offers were of a marginal increase in wages. In the subsequent meetings of the Board, however, they agreed to a somewhat higher figure as minimum wage. But the gap between the demand of labour and the offer of the employers was still quite wide and we had to devote considerable time and energy in connection with our efforts to bridge the gap and for devising a suitable minimum wage. We were anxious that there should be unanimity on this important and vital question. But we regret to say that due to various reasons it had not been ultimately possible for the Board to reach unanimity on the question of total minimum emoluments."

In the course of their deliberation a stage came when the labour representatives were not prepared to accept a minimum wage which was less than Rs. 200 per month for Bombay, Calcutta and Madras ports where the employer members adhered to their earlier offer of minimum wage of Rs. 185 per month for these Ports. Then the Board stated as follows in paragraph 7.1.64 of the Report:—

> "When it appeard that achieving unanimity was not possible, efforts were made to see if, under the circumstances, the labour members could agree to a reasonable minimum wage and it was ultimately possible to make them agree to a minimum wage of Rs. 202 per month for the ports of Bombay, Calcutta and Madras, and to lesser figures in respect of other ports; but this was not acceptable to the employer members. The Chairman and independent members, however, felt that this figure of minimum was reasonable in view of what has been stated earlier and they agreed to recommend it for Bombay, Calcutta and Madras. The Board has therefore taken the decision (employer members dissenting) that the total minimum wage at Bombay, Calcutta and Madras should be Rs. 202 p.m."

31. It is clear from the above conclusion arrived at by the Board that the Board had taken a decision that the total minimum wage at Bombay, Calcutta and Madras should be Rs. 202 per mensem. This amount was arrived at as a minimum wage by the labour representatives giving up their claim for higher rate of minimum wage. The repurcussion or the effect of their decision of fixation of minimum wage of Rs. 202 per mensem in major ports is explained in paragraphs 7.1.65 and 7.1.66. The break up of the minimum wage is indicated at paragraph 7.1.67. The major difference in the quantum of minimum wage as sponsored by the majority and suggested by the employer is due to the difference in the D.A. The minimum D.A. at that time was Rs. 71 per month: It did not give exactly 90 per cent neutralisation as mentioned in the report of One-man Dearness Allowance Committee. It should be Rs. 72 per month and hence the Wage Board proposed it as the minimum D.A. at the All India Working Class consumer price index no. 215. The employer members have suggested that at this index number the D.A. should be Rs. 50 plus additional D.A. of Rs. 5 per month. The Wage Board in paragraph 7.1.70 keeping various factors in view, came to the conclusion by majority decision in respect of D.A. at all ports and C.A. at Mormugao port with the total minimum wage at various ports to be divided into basic, D.A., H.R.A. and C.A. in the following manner. So far as it relates to the Port of Calcutta the basic pay was fixed at Rs. 100, D.A. at CPI no. 215 at Rs 72, C.A. Rs. 10 and H.R.A. Rs. 20 making a grand total of Rs. 202 per month as against Rs. 185 as suggested by the employers. On the basis of the above conclusion the Board fixed the minimum wage for the bargemen as contained in item 7 under the 'Pay scales for the dock workers' which has already been referred to above.

32. Because of my finding that the Dandees and Majhis are Port and Dock workers, they are entitled to get the wages and allowances as fixed by the Wage Board. It is clear from the conclusions arrived at by the Wage Board that what is sought to be fixed, by way of wages and allowance was the minimum wage. Once a minimum wage is fixed, the employers cannot question it on the ground that it is not based upon the employers' financial capacity to pay or on other circumstances. Comparison of rates of wages in other industries can be undertaken for determining fair wage and upper wage limit but not for determining the minimum of fair level of wages which should depend on the minimum requirement of the workers family consisting of three consumption adult units. Further, it has to be said that for comparison of wages, the wage prevailing in similar industries can be considered and such comparison need not be confined only to similar industries in the same State. The fact that similar industries in the State are situated near the port area in question cannot decide the issue in the case. For determining minimum wage it can be held that the rates pertaining in the different industries in the same district or State need not be considered. So far as lowest paid unskilled labour is concerned there cannot be much difference between industries either in respect of his needs or works. The wages of industrial workers must enable him to have not merely the means for bare subsistence of life but also for preservation of his efficiency as worker He must have means to provide for some measure of education, medical relief and amenities. It is the minimum which he must have irrespective of the capacity of the industry or its employer to pay.

33. It is conclusive that when a minimum wage is fixed to be paid no question of capacity to pay of the employer arises for consideration. In this regard a decision reported in Crown Aluminium Works *v.* Their Workmen, 1958 I LLJ, page 1 is important. It states the objective which industrial adjudication in a modern democratc welfare state has to keep in mind in fixing wage structure. It states as follows in one portion of its judgment in quoting the authority of Sir Frank Tillyard:

> "The old principle of the absolute freedom of contract and the doctrine of *laisez faire* have yielded place to new principles of social welfare and common good. Labour naturally looks upon the constitution of wage structures as affording 'a bulward against the dangers of a depression, safeguard against unfair methods of competition between employers and a guaranty of wages necessary for the minimum requirements of employees'. There can be no doubt that in fixing wage structures in different industries, industrial adjudication attempts gradually and by stages through it may be, to attain the principal objective of a welfare state, to secure 'to all citizens justice, social and economic'. To the attainment of this ideal the Indian Constitution has given a place of pride and that is the basis of the new guiding principles of social welfare and common good to which we have just referred."

It proceeded to say again,

> "Industrial adjudication has naturally to apply carefully the relevant principles of wage structure and decide every industrial dispute so as to do justice to both

labour and capital. In deciding industrial disputes in regard to wage structure, one of the primary objectives is and has to be the restoration of peace and goodwill in the industry itself on a fair and just basis to be determined in the light of all relevant considerations. There is, however, one principle which admits of no exceptions. No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage. It is quite likely that in under-developed countries, where unemployment prevails on a very large scale, unorganised labour may be available on starvation wages; but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare state. If an employer cannot maintain his enterprise without cutting down the wages of the employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms."

Then the Supreme Court considered whether the wage structure fixed in a given industry can never be revised to the prejudice of the workmen. It gave the answer as follows:—

"Considered as a general question in the abstract it must be answered in favour of Mr. Sen. We do not think it would be correct to say that in no conceivable circumstances can the wage structure be revised to the prejudice of workmen. When we make this observation, we must add that even theoretically no wage structure can or should be revised to the prejudice of workmen if the structure in question falls in the category of the bare subsistence or the minimum wage. If the wage structure in question falls in a higher category, then it would be open to the employer to claim its revision even to the prejudice of the workmen, provided a case for such revision is made out on the merits to the satisfaction of the Tribunal. In dealing with a claim for such revisions, the tribunal may have to consider, as in the present case whether the employer's financial difficulties could not be adequately met by retrenchment in personnel already affected by the employer and sanctioned by the Tribunal. The Tribunal may also enquire whether the financial difficulties facing the employer are likely to be of a short duration or are going to face the employer for a fairly long time. It is not necessary, and would indeed be very difficult, to state exhaustively all considerations which may be relevant in a given case. It would, however, be enough to observe that after considering all the relevant facts, if the Tribunal is satisfied that a case for reduction in the wage structure has been established then it would be open to the Tribunal to accede to the request of the employer to make appropriate reduction in the wage structure, subject to such conditions as to time or otherwise that the Tribunal may deem fit or expedient to impose. The Tribunal must also keep in mind some important practical consideration. Substantial reduction in the wage structure is likely to lead to discontent among workmen and may result in disharmony between the employer and his employees; and that would never be for the benefit of the industry as a whole. On the other hand, in assessing the value or importance of possible discontent amongst workmen resulting from the reduction of wages, Industrial Tribunals will also have to take into account the fact that if any industry is burdened with a wage structure beyond its financial capacity, its very existence may be in jeopardy and that would ultimately lead to unemployment. It is thus clear that in all such cases all relevant considerations have to be carefully weighed and an attempt has to be made in each case to reach a conclusion which would be reasonable on the merits and would be fair and just to both the parties."

33A. The subtle distinction as to (1) the living wage, (2) the fair wage and (3) the minimum wage is pointed in Express Newspapers (P) Ltd. v. Union of India & Others, 1961 (I) LLJ, 339. Referring to minimum wage it stated,

"There is also a distinction between a bare subsistence or minimum wage and a statutory minimum wage. The former is a wage which would be sufficient to cover the bare physical needs of a worker and his family, that is, a rate which has got to be paid to the worker irrespective of the capacity of the industry to pay. If an industry is unable to pay to its workmen at least a bare minimum wage, it has no right to exist."

34. On a careful consideration of the above decision and the implications involved in the wage structure proposed by the Wage Board there is reason to think that in the wage structure which is before us as determined by the Wage Board is in any way higher than the minimum wage which the employer is bound to pay in spite of the fact

that their industry is not capable of paying the wage structure on account of their present financial position. The employers, are therefore liable to pay the wages in terms of the recommendations of the Wage Board as set-forth above. The Dandees and Majhis will draw their wages and allowances from their respective employers who are parties to this proceeding at the rate specified in the Wage Board recommendation.

35. Some argument is advanced to the effect that the recommendation of the Central Wage Board would not bind the members of CRTA since they were not represented before the Wage Board during its deliberations. Para 1.6 (Page 1) of the report of the Wage Board gives details of the parties of both labour and management which appeared before the Wage Board and participated in the delibrations. Bengal Chamber of Commerce and Industry was one such party which represented the management. In paragraph 10 of the written statement dated 3rd May, 1975 by the BRIA it is admitted that CRIA was a member of Bengal Chamber of Commerce. There is also evidence in the case that CRIA is affiliated to the same Chamber of Commerce. In the light of the evidence and other circumstances the only conclusion possible in the case is that CRTA was represented before the Wage Board and the finding by the Wage Board has to be accepted. There was no case that the members of BRTA or the Shipping Company were not members of CRTA at that time. The Bengal Chamber of Commerce as a representative body appeared before the Wage Board and took part in its deliberations. So the members of CRTA, BRTA and the Shipping Company are bound by the recommendations of the Wage Board.

36. Sub-section (4) of Section 17A empowers a Tribunal to name the date from which an award given by it shall come into operation. But the period from which the terms of an award may be enforceable will be the period mentioned in Sub-section (1) or sub-section (3) or (4) of Section 17A. The retrospective operation of an award indicates that it operates from a date prior to Reference and the word 'retrospective' cannot apply to the period between the date of the reference and the award. The industrial adjudication has generally treated the date of demand and the date of award as two extreme points for fixing the date on which the award should come into operation. Yet, the adjudication has discretion to fix any intermediate date depending upon the circumstances of each case. In the words of the Supreme Court in Hindustan Times *vs.* Their Workmen, 1963 I LLJ 108, "Indeed it is difficult and not desirable to lay down general principles of such matters that require careful considerations in the peculiar circumstances of each case for the exercise of discretion". It is on a consideration of the totality of circumstances, such as how long the previous award if any has been enforced, whether the demand of the workmen was exaggerated or reasonable, the conduct of parties in the course of the dispute and so many other factors peculiar and relevant to the enquiry, that the date from which an award is to be given effect to is generally fixed by the Tribunal. The annual financial burden which an award is likely to cast upon a concern is one of such relevant considerations. Finally it is by a judicial process of enquiry that the date from which an award is to take effect has to be determined. After the first demand was made for enhanced wages and allowances there had been a series of settlements between the employers and Union enhancing at every time either the basic salary or allowances under each of those settlements to be paid to Majhis and Dandees from time to time. Exts. M-5 series were those settlements, under which a total sum of Rs. 149/- had to be paid every month to the bargemen by the time the last of those settlements were arrived at on 18-6-74. So, the bargemen had the benefit of enhanced salary or allowances beginning from 7-10-1969. Their present claim is that the award shall come into force with effect from 1-1-1969, when the Wage Board Report was made enforceable by the order of the Central Government. I do not think it fair or proper to give effect to the award from 1-1-1969 much less from the date of the reference dated 22-8-1970. In this regard I have to take into consideration the financial implication and extra burden which the employer had to undertake during the past years. The jute industry during the period at least in 1974 and 1975 was in a bad shape. The barge owners had to depend upon that industry mostly on carriage of cargo for getting freight charges. There may be better future for that industry which I will indicate at a later stage in the course of this Award. Taking all these circumstances into consideration I am constrained to hold that the Award for payment of wages and allowances to Majhis and Dandees on the basis of the recommendations of the Wage Board shall come into force with effect from 1-1-1976.

37. The next question for consideration is second part of the reference, *i.e.* whether the Dandees and Majhis would be entitled to enhanced wages, and allowances and if so what would be the rate of their monthly wages and allowances. This has to be decided independently of the recommendations of the Wage Board on the materials available on record. The rate of wages and allowances under the 2nd part of the Award has to be determined as if the rate under the Wage Board is fair wage and not minimum wage.

Taking into consideration the evidence and all other facts and circumstances borne out from the records of this case there is justification for fixing the rate recommended by the Wage Board as the fair wage due to be paid to the Dandees and Majhis with effect from 1-1-1976.

38. The most important consideration in this regard is whether the members of CRTA and BRTA as well as the Shipping Company have the financial capacity to pay the fair wages and allowances as set forth above. The capacity to pay is a pre-requisite for deciding wage structure in any industry as laid down in Express Newspapers Private Limited *vs.* The Union of India, 1957, Supreme Court Reporters, p. 12 and French Motor Car Limited *vs.* Workmen, 1963 II Supreme Court Reporter, p. 16. The industry-*cum*-region principle may not have any direct application in the instant case as there is no similar industry comparable to the barge industry in the area except the dock workers of Calcutta Port Trust doing similar work. The Wage Board had considered the wage structure of dock workers in the light of industry-*cum*-region basis so far other types of industries in the region were concerned. Neither side in this case placed any material before the tribunal to ascertain the pay structure of any other industry with a view to make a comparative study of the wages and allowances of the employees other than the bargemen finally to come to a conclusion as to the wage structure proposed to be constructed in the instant case. In the absence of any such material we may consider the issue as to the financial position of barge owners in this case which would permit them to pay fair wage as they call it at rates considered and fixed by the Wage Board. We have to give greater weight to the capacity to pay theory in the nature of the contentions put forward in this case. I have already stated that the industry is bound to pay the minimum wage irrespective of the fact whether the industry has the capacity to pay or not. For the purpose of fixing a fair wage to be paid to the bargemen under the latter part of the reference, I will consider the minimum wage fixed by the Wage Board as the fair wage. The wages fixed by the Wage Board to be paid to the bargemen appear to be sound and proper. In this regard we have to examine, therefore, the financial position of the concerned barge owners. In this connection see the observation at page 745 in Filmistan Private Ltd., vs Its workmen, 1966 I LLJ, p. 744. It states as follows:

> "It is hardly necessary to emphasize that in dealing with a claim for revision of wages which is generally complex and complicated, having regard to the categories of employees engaged in an industrial undertaking, industrial adjudication should not be content with making generally observation only. It must examine the facts and figures relating to the financial position of the establishment concerned; compare the said position with the financial position of comparable concerns; enquire what would be the total impact of the additional burden of the revised wage-structure. The failure of the tribunal to adopt such a course constitutes yet another serious infirmity in its approach."

It is relevant to point out the observation in another decision reported in 1971 II LLJ. p. 491, Management of the Karlimpudi Sugar Mills Ltd., *vs.* The Industrial Tribunal, A.P. and another. It states, "The fact that industry in the region has not been divided into classes cannot vitiate the recommendations of the Wage Board". Further it has again pointed out, "Notwithstanding the fact that a fair wage has been fixed by the Wage Board which would be applicable to all the units in the region, it may be opened to any particular unit to plead that in fact its financial position is not such that it can bear the burden of implementing the recommendations". In the light of these observations we have to examine next the case of the concerns who are members of the CRTA and BRTA and that of the position of the Shipping Company.

39. On behalf of CRTA three witnesses were examined to prove the financial position of the members of the Association. They are MWs 1 to 3. MW-4, however, does not speak about any financial status of any of the concerns. MW-1 is the Manager of Paul & Chakravorty Pvt. Limited which is a member of CRTA. Though he is not connected In any manner with any of the other member of CRTA, he had chosen to give evidence about financial position of other members as well as the financial position of his own concern. Ext. M-23 series are balance sheets of Paul & Chakravorty Pvt. Ltd. Ext. M-23 series are said to be for the years ending 31st December, 1970 to 31st December, 1974 *i.e.* for a period of five years. The annual profit for the year 31st December, 1974 after providing for depreciation amount comes to Rs. 74,742.52P. For the year ending 31st December, 1973 the profit was Rs. 89,630.25 P. For the year ending 31st December 1972 the profit was Rs. 33,071.61P. This is a company which declared a commission on the profit to be paid to the Directors. It had also declared dividends every year. In Ext. M-23(a)

it is stated in the report of the Directors that during the year ended 31st December, 1971 the company has been able to improve the business than that of the previous years in spite of the cost of materials and maintenance had substantially increased. Similarly, MW-1 has to admit that the number of barges had to be reduced from year to year because of the decline in the business. He spoke of the total number of Majhis as 325 and total number of Dandees about 995 employed in various concerns of the CRTA. The financial position of this company has also to be considered in general along with other companies who are members of the CRTA. It is however clear from the balance sheets that they had made a profit at least from 1972 to 1974. The next company with which we are concerned is Indian Shipping Company, the manager of which was examined as MW-2. He was also the President of the CRTA. He claimed that out of 63 barges which his company owned in the beginning they have only 26 barges now working of which he said 10 barges remained idle. Ext. M-31 is a statement of the Indian Shipping Company Ltd. where the freight charges which the company earned are incorporated. It is difficult to make out from the same as to the amount of work which a barge turned out within the territory of India. The number of barges was being reduced from year to year. So the freight charge they receive is not a deciding factor to ascertain the total amount of money they earned. He stated that his barges were used to be sent to Bangladesh as well. The freight earning had gone down because of the reduction in the number of barges. So, Ext. M-31 is not a correct position of the working of his concern. Ext. M-20 was said to indicate the additional burden of the amount which each of the six members under CRTA were to bear if the recommendations of the Wage Board as to the wages to be paid to the bargemen is accepted. None of the companies had produced any relevant document to come to a conclusion as to the correctness of the figures in Ext. M-20. On the basis of Ext. M-20 it is difficult to say that the burden of the company would be as it is reflected in this exhibit. The Indian Shipping Company had marked Ext. M-27 series as their balance sheets. They received a profit of Rs. 3,94,208 for the year ended 30th June, 1974 *vide* Ext. M 27(b). Evidently therefore that company was prosperous enough to meet the additional burden.

40. MW-3 is the Secretary of the Shankar Shipping Company which is a member of CRTA. The balance sheets of that company are marked as Ext. M-28 series. The record of volume of business they turned out for the year had not been produced. They had 24 barges under their management. They produced neither ledger nor the day book of their business to ascertain their correct financial position. Admittedly they had reduced the number of berges from year to year. He admitted that he scrapped four of his barges and there were 26 Dandees and 20 Majhis under their employment upto December, 1975. Without a correct record of the turn over of business which they had carried out, it is difficult to assess their financial position though they have produced Ext. M-28 series as their balance sheets. They produced balance sheets for the years beginning from 31st December, 1972 to 31st December, 1974. Shankar Shipping Company is a Private Limited Company. They declared profit for the year ended 31st December, 1972, 1973 and 1974. The other three companies, Calcutta Landing & Shipping Company, M. K. & Co., and R. K. Chatterjee & Sons Ltd., who are members of CRTA, did not examine any witness to prove their financial position or the turn out of their business they conducted for the years 1975 or earlier years. However, Calcutta Landing & Shipping Company produced Ext. M-24 series as their annual balance sheets. They disclosed a loss for the year ending 31st October, 1970 *vide* Ext. M-24, but they declared a net profit of Rs. 2,29,617 for the year ended 31st October, 1973. The balance sheet for the subsequent year is not produced. M. K. & Co has produced their balance sheet as Ext. M-25 series. It is a Partnership company. The balance sheets are typed written and the authenticity of the balance sheets are not proved. They produced balance sheets beginning from 26th April, 1971 and ending with 4th May, 1973. The 1971 balance sheet is only a copy of the original and the original has not been produced. The partners of the company are not examined. The book of accounts have not also been marked or proved. It is difficult to say from the balance sheets whether they represent the true financial position of the partners in regard to barge business. It is difficult in the circumstances of the case to accept their balancesheets in the absence of any evidence to prove, the loss or profit that they sustained during the period. There is no other material except the self-styled budget to prove the financial position of the company. Ext. M-26 series are balance sheets maintained by R. K. Chatterjee & Sons Pvt. Ltd. The authenticity of the balance sheets is not proved. The balancesheets are typed written. In spite of the alleged declaration of loss from year to year they seemed to have paid dividend to their share holders. That is an indication that their profit and loss account are not upto-date. The evidence of MWs 1 to 3 related to the financial position of Paul & Chakravorty Pvt. Ltd., Indian Shipping Company and Shankar Shipping Company Ltd. was not convincing or reliable. There is no evidence to ascertain the financial position of Calcutta Landing & Shipping

Company, M. K. & Company and R. K. Chatterjee & Sons Pvt. Ltd., except the balance sheets, the authenticity of which could not be ascertained.

41. MW-5 is the General Secretary of BRTA. There are 90 members of whom about 80 are barge owners in BRTA. On the whole they own about 200 barges at present though they had 220 barges some years before. MW-5 himself is the owner of two barges. He had four barges under his control before but he had to scrap two out of the four barges. The financial position of his business is not before the tribunal. However, he had chosen to produce Ext. M-39 which is a statement of the wage liability that was likely to be imposed on the members of BRTA in case the recommendations of the Wage Board are accepted. Ext. M-39 does not represent a correct position of the wages to be paid to the Dandees and Majhis if the recommendation of the Wage Board was brought into force. It is pointed out that the burden of the barge owners under BRTA would be about Rs. 6,000/- per barge per year. The details about the number of Dandees and Majhis are not placed before the Tribunal. The details worked out in Ext. M-39 do not reflect the correct position about the wages to be paid to the Dandees and Majhis. MW-5 did not produce his own account or balance sheet of his concern but tried to prove the balance sheet of Rajput Transport Pvt. Ltd. which is another member of BRTA. Ext. M-40 is the balance sheet of that concern. One of the directors of Rajput Transport Private Ltd. is examined as MW-6. MW-6 admits that he had nothing to do directly with the preparation of the balance sheet. True picture of the company's financial position cannot be estimated without producing the relevant ledger or day book. Ext. M-40 series therefore cannot be relied upon the circumstances of the case. MW-7 is a proprietor of Hooghly River Transport Company which is proprietory concern. He produced Ext. M-41, a sheet to show the financial position of the company. Ext. M-41, however, gives a comparative figure of the wages to be paid to the bargemen on the basis of the recommendations of the Wage Board on the alleged basis of the amount which is being paid by his concern to the bargemen at present. The case as per Ext. M-41 is that if the recommendation of the Wage Board is accepted his company has to pay a higher rate of wages to the bargemen, but it is for MW-8 to show the exact financial position of his company. There is no record in support of his case that he is not in a position to pay higher rate of wages. BRTA did not examine any other witness to prove their financial position. It is strange that none of the companies produced a single printed balance sheet. Except the word of mouth of MWs 5, 6 and 7 there is no reliable record to ascertain the financial position of any of the companies.

42. Next we have to consider the financial position of Shipping Company, the Personnel Officer of which company is examined as MW-8. It has to be said that Shipping Company is one of the prosperous barge owners in the region. Their balance sheets are marked as Ext. M-47 series. They have declared a net profit of Rs. 14,83,148/- for the year 1973 and Rs. 17,42,225/- for the year 1974. Admittedly they have 667 dandees and majhis under their control working in various barges. On the basis of the agreement beginning from 7-10-69 and ending on 18-6-74 the barge owners *vide* Ext. M-5 series had to pay Rs. 149/- per month per head of majhi and dandee totalling a sum of Rs. 11,92,596/-. It was after meeting the wage expenses to the tune of that amount that the Shipping Company declared a profit as indicated above. The pay of the highest paid officer in that company is Rs. 4,300/- per month in addition to other allowances. They have declared dividend every year. They pay commission to the directors on profits. It is difficult in the circumstances of the case to hold that the Shipping Company will not be in a position to meet the higher cost of wages to be paid to the bargemen under their control. If Shipping Company was to make such profit it is difficult to understand why the other companies who are members of BRTA and CRTA were not able to make profits. It is clear from the evidence on record that these barge owners would be in a position to pay the amount of higher rate of wages and allowances to the bargemen beginning from 1-1-1976 even assuming that the Central Wage Board fixed fair wage under their recommendations.

43. It is relevant at this stage to point out that the barge industry depended upon the prosperity of the jute industry in West Bengal. It is admitted that the income of barge owners is from the freight charges which they get from the Jute Mill owners whose jute products the barges carry from the mills to the port and other goods from port to the mills due to the export and import business. There is evidence that the jute industry was not in good shape for some time. But it is stated the problems facing jute industry were temporary. So, there is no reason to feel that the future of the industry is bleak. It was further pointed out that the export position of jute goods would be much better in the near future going above 270 crores of rupees in this year as against 240 crores of the last year. I have been asked to take judicial notice of the fact that the jute industry will

get an impetus in export since the Central Government have started taking more and more control over the management and export of jute goods. A grant of 41 crores of rupees had been declared by the Government to be paid to the Indian Jute Mills Association as against 24 crores of the last year. IJMA is jubiliant over this grant. There cannot be any dispute in the future development and prosperity of the industry.

44. I find, therefore, that the barge owners are in a position to pay the alleged fair wages on the basis of the recommendations made by the Wage Board, but the conclusion arrived at in the second part of the Reference cannot be brought into operation in the award as I have already held in the first part of the reference that the barge owners are liable to minimum wages as recommended by the Wage Board to the bargemen under the control of all the barge owners who are parties to this Reference.

45. In the result, an Award is passed in favour of Dandees and Majhis working under the members of Calcutta River Transport Association and Bengal River Transport Association and that of the Port Shipping Company Limited for payment of wages and allowances with effect from 1st January, 1976 on the basis of the recommendations of the Central Wage Board for Port and Dock Workers on account of the finding that the Dandees and Majhis working in barges, lighters and boats and 'Dock Workers' within the meaning of Section 2(b) of the Dock Workers (Regulation of Employment) Act, 1948 (Act IX of 1948).

(Sd.) E. K. MOIDU,
Presiding Officer.

Dated, Calcutta, the 20th July, 1976.

[No. 72/10/70-P&D-D-IV(A).]

T. S. SANKARAN, Addl. Secy

महा प्रबन्धक, भारत सरकार मुद्रणालय मिन्टो रोड, नई दिल्ली द्वारा मुद्रित तथा
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